

No. 13104

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United States  
Court of Appeals  
For the Ninth Circuit.

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DAVID BERNSTEIN, Trading as Affiliated  
Credit Exchange and Business Research,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

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Transcript of Record

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Petition to Review and Set Aside Order of the  
Federal Trade Commission

FILED

JAN 21 1952







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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## APPEARANCES

CARL J. MOOSLIN,  
756 South Broadway.  
Los Angeles, Calif.,  
For the Petitioner.

W. T. KELLEY,  
General Counsel,

JAMES W. CASSEDY,  
Asst. General Counsel,  
Washington 25, D. C.,  
For the Federal Trade Commission.



United States of America  
Before Federal Trade Commission

Docket No. 5804

In the Matter of:

DAVID BERNSTEIN, an Individual Trading and  
Doing Business as AFFILIATED CREDIT  
EXCHANGE and BUSINESS RESEARCH

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that David Bernstein, an individual trading and doing business as Affiliated Credit Exchange and Business Research, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph One: Respondent David Bernstein is an individual trading and doing business under the names Affiliated Credit Exchange and Business Research, with his office and principal place of business located at 326 West Third St., in the city of Los Angeles, California.

Paragraph Two: Respondent is now, and for more than two years last past, has been engaged in conducting a collecting agency and in collecting ac-

counts owed to others upon a commission basis contingent upon collection. Many of these accounts are sent to respondent from persons residing in states other than California.

Paragraph Three: In the course and conduct of his business, respondent frequently desires to ascertain the current addresses of persons from whom he is endeavoring to collect moneys due to his clients, the names and addresses of the employers of such persons and other information about such persons. For this purpose he uses, and has used, post cards of the type commonly referred to as "double post cards." These cards are mailed in bulk by respondent to his agent in Washington, D. C., and are in turn mailed by said agent at Washington, D. C., to the addresses located in various states. One part of the card is addressed to and contains a message for the debtor. On the side for the debtor's address there appears the following:

"Return to  
"Business Research,  
"703 Albee Building,  
"Washington 5, D. C."

The card reads:

"Washington, D. C.

"To Addressee:

"To enable us to complete our records it is

necessary that you furnish the information requested on the attached card.

“Do this at once and mail to us.

“BUSINESS RESEARCH,  
“By D. BERNSTEIN.”

The other, or “reply” part of the post card, is addressed to “Business Research, 703 Albee Building, Washington 5, D. C.” and is intended to be detached, filled out and mailed by the debtor. The following is a copy:

“Subject .....  
“Subject’s Address .....  
“Subject’s Employer .....  
“Address: .....  
“Monthly Salary: ..... Does this  
include room, board or services?.....  
“Employed Since (Approximate date):.....  
“Own Home? ... Rent? ... Own Auto?...  
“If married, spouse’s name:.....  
“Spouse’s employment, if any:.....  
“Number of dependents:.....  
“Your name: .....”

Along the right side of the card a box of figures similar to the arrangement appearing on “punch cards” commonly used for statistical purposes, is printed. Such cards as are completed and mailed

to the Washington, D. C., address are forwarded from Washington, D. C., to respondent in the State of California, by his said agent.

Paragraph Four: Through the use of the name "Business Research" and the form and phraseology of the cards, respondent represents that he is engaged in conducting a business research bureau or office, or in compiling business and labor statistics and that the information requested is for such purposes.

Paragraph Five: The aforesaid representations and the implications arising therefrom are false and misleading.

In truth and in fact, respondent is not conducting and is in no way connected with any research bureau, business or labor statistical office. His business and the sole purpose in sending said cards is in connection with the collection of accounts, and he is not engaged in business or labor research or the compiling of statistics of any nature.

Paragraph Six: The uses hereinabove set forth of the aforesaid cards has, and has had, the capacity and tendency to mislead and deceive, and has misled and deceived, many persons to whom the said cards were sent into the erroneous and mistaken belief that the trade name used by respondent indicated the true nature of his business; that he was engaged in conducting a research bureau or office or in compiling business and labor statis-



tics, and induced the recipients thereof to give information to respondent which otherwise they would not have supplied.

Paragraph Seven: The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Wherefore, the Premises Considered, the Federal Trade Commission on this 5th day of September, A.D. 1950, issues its complaint against said respondent.

#### Notice

Notice is hereby given you, David Bernstein, respondent herein, that the 6th day of November, A.D. 1950, at 10 o'clock, is hereby fixed as the time, and Los Angeles, California, as the place when and where a hearing will be had before Everett F. Haycraft, a trial examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified and required, on or before the 20th day after service upon you of this complaint, to file with the Commission an answer to said complaint. The Rules of Practice of the Commission

with respect to answers or failure to appear or answer (Rule VIII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

\* \* \*

Failure of the respondent to file answer within the time above provided, and failure to appear at the time and place fixed for hearing, shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint, and findings as to the facts and conclusions based upon such answer shall be made and order entered disposing of the matter without any intervening procedure.

The respondent may, however, reserve in such answer the right to submit proposed findings and conclusions under Rule XXI, and the right to appeal under Rule XXIII.

Rule V of the Rules of Practice provides in part:

Upon request made within fifteen (15) days after service of the complaint, any party shall be afforded opportunity for the submission of facts, arguments, offers of settlement or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and due consideration shall be given to the same. Such submission shall be in writing. The filing of such request shall not operate to delay the filing of the answer.

In Witness Whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary and its official seal to be hereto affixed at Washington, D. C., this 5th day of September, A.D. 1950.

By the Commission.

[Seal]      /s/ D. C. DANIEL,  
Secretary.

United States of America  
Before Federal Trade Commission

[Title of Cause.]

ANSWER

Comes now respondent and in answer to complaint on file, admits, denies and alleges as follows:

I.

Respondent admits all the material allegations of fact charged in the complaint to be true.

II.

Respondent denies that he is engaged in interstate commerce and that the Federal Trade Commission lacks jurisdiction to entertain this matter and that the Federal Trade Commission Act does not apply to this respondent.

III.

Respondent reserves herein the right to appeal under Rule XXIII of the Rules of practice of the Federal Trade Commission.

/s/ DAVID BERNSTEIN,

/s/ CARL J. MOOSLIN,

Attorney for Respondent.

Received October 2, 1950.

United States of America  
Before Federal Trade Commission

[Title of Cause.]

REQUEST FOR PERMISSION TO FILE  
SUBSTITUTE ANSWER

To Trial Examiner Everett F. Haycraft:

You will please take notice that respondent, through undersigned counsel, respectfully requests permission to substitute the accompanying Answer for the Answer heretofore filed and received by your office on October 2, 1950, as a review of said previous Answer has disclosed apparent contradictory statement and said Answer would not serve to properly place the issues before the Commission.

Respectfully submitted,

DAVID BERNSTEIN,  
By /s/ CARL J. MOOSLIN,  
Attorney for Respondent.

Dated this 16th day of October, A.D. 1950.

Received October 19, 1950,

United States of America  
Before Federal Trade Commission

[Title of Cause.]

ORDER GRANTING RESPONDENT'S MOTION FOR PERMISSION TO WITHDRAW ANSWER AND TO FILE SUBSTITUTE ANSWER

This matter coming on to be heard by the Trial Examiner upon the request of counsel for respondent dated October 16, 1950, for permission to withdraw original answer filed October 2, 1950 because of an apparent contradictory statement appearing therein, and to file in lieu thereof a substitute answer dated October 16, 1950; and the trial examiner having duly considered the motion,

It Is Ordered that motion of counsel for respondent for permission to withdraw answer filed herein on October 2, 1950, and to file in lieu thereof answer dated October 16, 1959, be, and the same hereby is, granted.

Dated at Washington, D. C., this 19th day of October, 1950.

/s/ EVERETT F. HAYCRAFT,  
Trial Examiner.

Received October 19, 1950.



United States of America  
Before Federal Trade Commission

[Title of Cause.]

ANSWER

Comes Now the respondent, David Bernstein, an individual, trading and doing business as Affiliated Credit Exchange and Business Research, by his attorney, Carl J. Mooslin, and answering the complaint in this proceeding states that he admits all the material allegations of fact set forth in said complaint and waives all intervening procedure and further hearing as to the said facts.

Respondent denies that he is engaged in Interstate Commerce and further alleges that the Federal Trade Commission lacks jurisdiction over this respondent, and further that the Federal Trade Commission Act does not apply to this respondent and therefore respondent denies that the facts alleged in the complaint constitute a violation of the Federal Trade Commission Act and reserves the right to file brief and have oral argument on the law herein and reserves the right to appeal from any decision entered herein by the Commission.

Dated this 16th day of October, A.D. 1950.

DAVID BERNSTEIN,  
By /s/ CARL J. MOOSLIN,  
Attorney for Respondent.

Received October 19, 1950.

United States of America  
Before Federal Trade Commission

[Title of Cause.]

NOTICE OF PLACE OF HEARING

Notice is hereby given that hearing in the above-entitled matter set to begin at 10 a.m. PST on November 6, 1950, in Los Angeles, California, will be held in Room 229, United States Post Office & Court House Building.

/s/ EVERETT F. HAYCRAFT,  
Trial Examiner.

October 24, 1950.

Received October 24, 1950.

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United States of America  
Before Federal Trade Commission

[Title of Cause.]

PROPOSED FINDINGS AND CONCLUSION

To Trial Examiner Everett F. Haycraft:

Pursuant to Rule XXI of the Rules of Practice of the Federal Trade Commission, J. W. Brookfield, Jr., attorney supporting the complaint herein, submits to the Trial Examiner his proposed findings and conclusion therein, together with the reasons therefor as hereinafter set forth:



### Proposed Finding:

Respondent David Bernstein is an individual trading and doing business under the names Affiliated Credit Exchange and Business Research, with his office and principal place of business located at 326 West Third St., in the city of Los Angeles, California.

Respondent is now, and for more than two years last past, has been engaged in conducting a collecting agency and in collecting accounts owed to others upon a commission basis contingent upon collection. Many of these accounts are sent to respondent from persons residing in States other than California.

### Reason for Proposed Finding:

Admitted by answer and R. pp. 5-6, 8-9, stipulation R. p. 21.

### Proposed Finding:

In the course and conduct of his business, respondent frequently desires to ascertain the current addresses of persons from whom he is endeavoring to collect moneys due his clients, the names and addresses of the employers of such persons and other information about such persons. For this purpose he uses, and has used, post cards of the type commonly referred to as "double post cards." These cards are mailed in bulk by respondent to his agent in Washington, D. C., and are in turn mailed by said agent at Washington, D. C., to the addresses located in various States. One part of the card is addressed to and contains a message for the debtor.

On the other side of the debtor's address there appears the following:

"Return to  
 "Business Research,  
 "703 Albee Building,  
 "Washington 5, D. C."

The card reads:

"Washington, D. C.

"To Addressee:

"To enable us to complete our records it is necessary that you furnish the information requested on the attached card.

"Do this at once and mail to us.

"BUSINESS RESEARCH,  
 "By D. BERNSTEIN."

The other, or "reply" part of the post card, is addressed to "Business Research, 703 Albee Building, Washington 5, D. C.," and is intended to be detached, filled out and mailed by the debtor. The following is a copy:

"Subject .....  
 "Subject's Address .....  
 "Subject's Employer .....  
 "Address: .....  
 "Monthly Salary: ..... Does this  
     include room, board or services? .....  
 "Employed Since (Approximate Date):.....  
 "Own Home ... Rent? ... Own Auto? ...  
 "If married, spouse's name: .....  
 "Spouse's employment, if any: .....  
 "Number of dependents: .....  
 "Your name: ....."

Along the right side of the card a box of figures similar to the arrangement appearing on "punch cards" commonly used for statistical purposes, is printed. Such cards as are completed and mailed to the Washington, D. C., address are forwarded from Washington, D. C., to respondent in the State of California, by his said agent.

Through the use of the name "Business Research" and the form and phraseology of the cards, respondent represents that he is engaged in conducting a business research bureau or office, or in compiling business and labor statistics and that the information requested is for such purposes.

#### Reasons for Proposed Findings:

It is admitted in the answer that respondent mails cards as desired. See also Record pp. 10-13, Com. Ex. 1a-1b, 2a, 2b, 3, 4, 5, and 6, R. pp. 15-18, stipulation R. p. 21.

#### Proposed Finding:

The aforesaid representations and the implications arising therefrom are false and misleading.

In truth and in fact, respondent is not conducting and is in no way connected with any research bureau, business or labor statistical office. His business and the sole purpose in sending said cards is in connection with the collection of accounts, and

he is not engaged in business or labor research or the compiling of statistics of any nature.

Reason for Proposed Finding:

R. p. 17-18, stipulation R. p. 21.

Proposed Finding:

The uses hereinabove set forth of the aforesaid cards has, and has had, the capacity and tendency to mislead and deceive, and has misled and deceived, many persons to whom the said cards were sent into the erroneous and mistaken belief that the trade name used by respondent indicated the true nature of his business; that he was engaged in conducting a research bureau or office or in compiling business and labor statistics, and induced the recipient thereof to give information to respondent which otherwise they would not have supplied.

Reason for Proposed Finding:

Respondent testified that he receives answers from 10 per cent of those to whom cards are sent. R. p. 19. Stipulation R. p. 21.

Proposed Conclusion:

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

## Reasons for Proposed Conclusion:

Testimony, stipulation and exhibits above referred to:

The only question at issue is the respondent's denial that he is within the jurisdiction of the Federal Trade Commission. In that connection the Trial Examiner's attention is directed to the number of cases involving the use of skip tracers by those who do not sell these devices as well as those who sell the forms as an article in commerce. See *Silverman v. FTC* (2d) 751 in which Judge Denman of the 9th Circuit rules that the use of skip tracers was a cheap swindle.

In the recent case of *Lewis, et al., v. Post Master General* in the U. S. District Court for the District of Columbia, Judge Holtzoff dismissed the Post Office fraud case against respondent who was charged with using skip tracer methods, but in his opinion agreeing with the *Silverman* case stated that "Unfair and deceptive acts and practices are far broader than the words 'scheme or artifice to defraud.' The practice may be unfair, it may be deceptive without necessarily being a scheme or artifice to defraud." (U. S. Dist. Ct. for D. C., December 10, 1947.)

While originally the idea of "commerce" was confined to the shipment of goods or commodities between the states or between the nations, this idea during the past half century



has been broadened so that at the present time the term embraces all intercourse between the states. Even a personal telegraphic message or telephone call is commerce under the liberal and widened definition of the term. The most narrow and conservative definition of commerce would be intercourse of a business or commercial nature. Even under this definition respondent's actions in mailing cards from California to Washington and his agent's action in mailing the cards from Washington to the straying debtors in various states of the United States would constitute commerce.

Commerce is defined by *corpus juris* as embracing business or commercial intercourse in any and all forms and branches and in all component parts between the citizens of different states and may embrace purely social intercourse between citizens of different states (15 C.J.S. 257). Among the cases quoted in support of this definition is *Blumenstock Bro. Advs. Agency v. Curtis Publishing Company*, 252 U. S. 436; *Norm Advertising v. Parker*, 172 Southern 586, 588. The courts have held that securities are the subject of interstate commerce (*Oklahoma-Texas Trust v. S.E.C.* 100 F. (2d) 888) and radio broadcasting constitutes interstate commerce when the radius extends beyond state lines (*NBC v. Board of Public Utilities of N. J.* 25 F. Supp. 761). That causing the interstate transmission of in-

formation or intelligence would bring respondents herein under the Federal Trade Commission can therefore not be denied and the Commission in a number of cases which have been before it has taken jurisdiction over parties engaged in the collection business wherein the circumstances were identical with those in the present case. See *FTC v. Southern Michigan Collection Service, et al.*, Docket 5058; *FTC v. Ancestral Survey, et al.*, Docket 5056; *FTC v. Herman*, Docket 5225. In the pending case of *FTC v. National Surveys Bureau*, Docket 5745, in which respondent is using his own skip tracing forms in his efforts to locate delinquent debtors, the learned and able counsel representing respondent did not question the Commission's jurisdiction in view of the fact that he was mailing his letters throughout the country.

#### Proposed Order:

It is ordered that respondent David Bernstein, trading as Affiliated Credit Exchange and Business Research, his representatives, agents and employees, directly or through any corporate or other device in connection with the use of form letters, return postal cards or other written or printed material in carrying on the business or collecting or aiding in the collection of debts in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words Business Research or any other words of similar import to designate, describe or refer to respondent's business or otherwise representing, directly or by implication that respondent is engaged in research in business or other forms of research.

2. Representing that respondent's said business is other than that of collecting debts or that the information sought by means of respondent's devices is for any purpose other than for the use in the collection of debts.

3. From representing that respondent's business is located in Washington, D. C.

Respectfully submitted,

/s/ J. W. BROOKFIELD, JR.,

Attorney Supporting  
Complaint.

December 13, 1950.

Received December 15, 1950.



United States of America, Before  
Federal Trade Commission

[Title of District Court and Cause.]

ORDER CLOSING CASE BEFORE THE  
TRIAL EXAMINER

The taking of testimony in the above-entitled proceeding having been closed on the record as of November 6, 1950, and all intervening procedure as provided in the Commission's Rules of Practice having been complied with,

It Is Ordered that the case before the trial examiner be, and the same hereby is, closed as of December 20, 1950.

Dated at Washington, D. C., this 20th day of December, 1950.

/s/ EVERETT F. HAYCRAFT,  
Trial Examiner.

Received December 20, 1950.

United States of America, Before  
Federal Trade Commission

[Title of Cause.]

RULINGS UPON PROPOSED FINDINGS  
AND CONCLUSION

Counsel in support of the complaint presented proposed findings and conclusion and the reasons therefor which have been given consideration. Inasmuch as the proposed findings followed generally the allegations of the complaint, which were admitted by counsel for respondent (Tr. 21), they have generally been adopted and made a part of the findings of the trial examiner in the Initial Decision.

The only questions at issue according to the pleadings is whether or not the Federal Trade Commission has jurisdiction over the respondent who is not engaged in the sale of any commodities in interstate commerce but is engaged in the business of operating a collection agency by means of post cards, form letters, and other similar devices, known as "skip tracers," which are transported through the mails from his place of business in California to Washington, D. C., and elsewhere throughout the United States.

The Commission has issued orders to cease and desist in other cases involving the use of "skip tracing" and the practice has been also condemned in the decision of the United States Circuit Court

of Appeals, *Silverman vs. FTC*, reported in 145 Fed. (2nd) 751. In the case, Judge Denman of the 9th Circuit affirmed the Commission's order to cease and desist, holding that "Petitioner's scheme is a cheap swindle and the argument that it is less so because it may in certain cases trap swindling debtors is not one pleasing to entertain."

The proposed conclusion of counsel in support of the complaint with respect to what constitutes commerce as that word is defined and used in the Federal Trade Commission Act is also acceptable. Although the respondent herein was not engaged in the sale of any product in commerce, his business required the use of the mails and the transportation of post cards, form letters and other similar devices from one state to another. This practice brings respondent within the jurisdiction of the Federal Trade Commission.

/s/ EVERETT F. HAYCRAFT,  
Trial Examiner.

December 22, 1950.

Received December 26, 1950.

United States of America, Before  
Federal Trade Commission

[Title of Cause.]

INITIAL DECISION

By Everett F. Haycraft  
Trail Examiner

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 5, 1950, issued and subsequently served its complaint in this proceeding upon respondent David Bernstein, an individual trading and doing business as "Affiliated Credit Exchange" and "Business Research," charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint, and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of said complaint were introduced before the above-named trial examiner, theretofore duly designated by the Commission, and a stipulation was made on the record between counsel that the material allegations of fact in the complaint were true.<sup>1</sup> No testimony was offered in opposition to the allegations of the complaint and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial

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<sup>1</sup>Tr. 21.

examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel in support of the complaint, no proposed findings being submitted by counsel in opposition to the allegations of the complaint; and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order.

### **Findings as to the Facts**

Paragraph One: Respondent David Bernstein is an individual trading and doing business under the name of Affiliated Credit Exchange and Business Research, with his office and principal place of business located at 326 West Third Street in the city of Los Angeles, California.

Paragraph Two: Said respondent is now, and for more than two years last past, has been engaged in operating a collection agency and in collecting accounts owed to business and professional individuals, partnerships, and corporations, including doctors, dentists, garages, grocery stores, upon a commission basis contingent upon collection. Many of these accounts are sent to respondent from persons residing in states other than California. Most of respondent's said accounts are in western states, Oregon, Washington, Wyoming, and California, and the creditors are scattered about in many states.

Paragraph Three: Said Respondent, in the

course and conduct of his said business, attempts to ascertain the current addresses of persons from whom he is endeavoring to collect money due his clients, the names and addresses of the present employers of such persons and other information about such persons. For this purpose he has used and now uses double post cards which are mailed in bulk by said respondent to his agent in Washington, D. C., who, in turn, mails said post cards to the addresses located in various states of the United States. One part of the card is addressed to the debtor with the following message:

“Return to

“Business Research,

“703 Albee Building,

“Washington 5, D. C.”

The card reads:

“Washington, D. C.

“To Addressee:

“To enable us to complete our records it is necessary that you furnish the information requested on the attached card.

“Do this at once and mail to us.

“BUSINESS RESEARCH

“By D. BERNSTEIN.”

The other, or “reply” part of the post card, is addressed to “Business Research, 703 Albee Building, Washington 5, D. C.” and is intended to be de-



tached, filled out and mailed by the debtor. The following is a copy:

"Subject .....  
 "Subject's Address.....  
 "Subject's Employer.....  
 "Address .....  
 "Monthly Salary.....Does this  
     include room, board or services?  
 "Employed Since (Approximate Date).....  
 "Own Home?....Rent?....Own Auto?.....  
 "If married, spouse's name.....  
 "Spouse's employment, if any.....  
 "Number of dependants.....  
 "Your name....."

Along the right side of the card a box of figures similar to the arrangement appearing on "punch cards" commonly used for statistical purposes, is printed. Such cards as are completed and mailed to the Washington, D. C., address are forwarded from Washington, D. C., to respondent in the State of California, by his said agent.<sup>2</sup>

Through the use of the name "Business Research" and the form and phraseology of the cards, respondent represents that he is engaged in conducting a business research bureau or office, or in compiling business and labor statistics and that the information requested is for such purposes.

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<sup>2</sup>Tr. 10-13, 15-18, 21; Cxs. 1a-1b, 2a, 2b, 3, 4, 5, and 6.

Paragraph Four: The aforesaid representations and the implications arising therefrom are false and misleading. In truth and in fact, respondent is not conducting and is in no way connected with any research bureau, business or labor statistical office. The sole purpose in sending the post cards is in connection with the collection of unpaid accounts. He is not engaged in any other business.

Paragraph Five: The method used by respondent in ascertaining the location of debtors is known as "skip tracing." Said respondent has no office in Washington, D. C., and employs an agent for the sole purpose of distributing the double post cards, hereinbefore described, to locate the debtor and to get as much information as possible in order to make a recovery of money for the creditor who has employed the said respondent for that purpose. This subterfuge was used to get the desired information because if respondent wrote to them in the name of the creditor or in the name of Affiliated Credit Exchange, the debtor never would answer.

Paragraph Six: The use by said respondent, as hereinabove set forth, of the false, deceptive and misleading representations and designations, has had and now has the capacity and tendency to mislead and deceive, and has misled and deceived, many persons to whom the said cards were sent into the erroneous and mistaken belief that the trade names used by the respondent indicated that he was engaged in conducting a research bureau or office or in compiling business and labor statistics,



and induced the recipients thereof to give information to said respondent which otherwise they would not have supplied.

### Conclusion

The aforesaid acts and practices of respondent as hereinabove set out are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

### Order

It Is Ordered that the respondent David Bernstein, an individual trading and doing business as Affiliated Credit Exchange and Business Research, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a collection system, including the use of double post cards, form letters or other written or printed material, or similar devices, in taking on the business of collecting or aiding in the collection of accounts or debts, in commerce as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Using the words Business Research or any other words of similar import to designate, describe or refer to respondent's business or otherwise representing, directly or by implication that respondent is engaged in research in business or other forms of research.

2. Representing that respondent's said business is other than that of collecting accounts or debts or that the information sought by means of respondent's devices is for any purpose other than for the use in collection of accounts or debts.

3. Representing that respondent's business is located in Washington, D. C., or any other place other than where it is actually located for the purpose of misleading the debtors as to respondent's place of business.

/s/ EVERETT F. HAYCRAFT,  
Trial Examiner.

December 22, 1950.

Received December 26, 1950.

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United States of America, Before  
Federal Trade Commission

[Title of Cause.]

## NOTICE OF INTENTION TO APPEAL

To Federal Trade Commission and to Everett F.  
Haycraft, Trial Examiner:

Please take notice that the respondent in the above-captioned matter hereby files Notice of Intention to Appeal on the following grounds:

1. That the order does not determine whether or not respondent is engaged in interstate com-

merce and that the only basis for validity of the order is that an assumption has been made from the mere fact respondent uses the mails for post cards, letters and other similar devices from one state to another, that he is in interstate commerce.

2. That the order is based upon a finding that is not supported by evidence, to wit, that respondent offers for sale, sale and distribution of a collection system and that nowhere in the findings is there shown either by admission or by evidence that respondent offers for sale, sale and distribution of a collection system.

That service of the initial decision was made upon respondent on the 8th day of January, 1951.

Dated January 16, 1951.

DAVID BERNSTEIN,  
By /s/ CARL J. MOOSLIN,  
Attorney for Respondent and  
Appellant.

Received January 18, 1951.

United States of America, Before  
Federal Trade Commission

[Title of Cause.]

ORDER SUSTAINING IN PART AND DENY-  
ING IN PART RESPONDENT'S APPEAL  
FROM INITIAL DECISION OF TRIAL  
EXAMINER

This matter coming on to be heard by the Commission upon the respondent's appeal from the trial examiner's initial decision herein, his brief in support thereof, and a brief in opposition thereto, filed by counsel in support of the complaint (oral argument not having been requested); and

It appearing that the grounds relied upon to sustain the appeal are (1) that the trial examiner's findings as to the facts are defective in that they fail to show that the case is within the Commission's jurisdiction, the argument being that there is no specific finding that the respondent is engaged in interstate commerce, and (2) that the order to cease and desist prohibits the use of certain practices in connection with the offering for sale, sale and distribution of a certain kind of bill collection system, whereas the record shows that the respondent does not sell, but merely uses, the collection system described in the findings; and

It further appearing from the record that the respondent, with his principal place of business in the State of California, solicits for collection certain

accounts from business and professional individuals, partnerships and corporations located in various states of the United States other than California; that the records of such accounts are transmitted by mail to the respondent in California by such individuals, partnerships and corporations from their respective places of location; that the respondent then transmits by mail to an agent in Washington, D. C., certain post cards to be used by the agent in obtaining information concerning the persons from whom the respondent is attempting to make collections; and that the respondent's agent mails the cards to the alleged debtors and others located in various states throughout the country, a certain percentage of whom fill in the cards and return them by mail to the agent in Washington, D. C., who, in turn, mails them to the respondent in California; and

It further appearing that all of these facts are reflected in the trial examiner's findings as to the facts and that on the basis of such facts the trial examiner concluded that "The aforesaid acts and practices of respondent as hereinabove set out are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act"; and

The Commission being of the opinion that its jurisdiction over the respondent's operations is thus adequately shown in the trial examiner's findings as to the facts; and

The Commission being of the further opinion, however, that the trial examiner's order to cease and desist improperly prohibits the practices referred to therein when used "in connection with the offering for sale, sale and distribution of a collection system \* \* \*," and should have enjoined such practices in connection with the use of post cards or other written or printed material in carrying on the business of collecting or aiding in the collection of accounts or debts:

It Is Ordered that the respondent's appeal from the trial examiner's initial decision in this proceeding be, and it hereby is, sustained in part and denied in part as hereinabove indicated.

The changes in the initial decision necessitated by this ruling are reflected in the Commission's decision of the case which is being issued simultaneously herewith.

By the Commission.

[Seal]      /s/ WM. P. GLENDENING, JR.,  
                 Acting Secretary.

Issued: July 9, 1951.



United States of America, Before  
Federal Trade Commission

Docket No. 5804

Commissioners: James M. Mead, Chairman; William A. Aryes, Lowell B. Mason, John Carson, Stephen J. Spingarn.

In the Matter of

DAVID BERNSTEIN, an Individual Trading and  
Doing Business as AFFILIATED CREDIT  
EXCHANGE and BUSINESS RESEARCH.

DECISION OF THE COMMISSION AND  
ORDER TO FILE REPORT OF COMPLI-  
ANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 5, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, David Bernstein, an individual trading and doing business as "Affiliated Credit Exchange" and as "Business Research," charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of the respondent's answer thereto, hearings were held at which testimony and other evidence in support of the complaint were introduced before a trial examiner of the Commission theretofore designated by it, and a stipulation by and between counsel was entered on the record to

the effect that the material allegations of fact set forth in the complaint were correct. The aforesaid testimony and other evidence were duly recorded and filed in the office of the Commission, and on December 26, 1950, the trial examiner filed his initial decision.

Within the time permitted by the Commission's Rules of Practice the respondent filed with the Commission an appeal from said initial decision; and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including the respondent's brief in support of its appeal and the brief in opposition thereto filed by counsel in support of the complaint (oral argument not having been requested); and the Commission, having issued its order sustaining in part and denying in part the respondent's appeal, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the findings as to the facts, conclusion, and order included in the initial decision of the trial examiner.

### Findings as to the Facts

Paragraph One: Respondent David Bernstein is an individual trading and doing business under the names of Affiliated Credit Exchange and Business Research, with his office and principal place of business located at 326 West Third Street in the City of Los Angeles, State of California.



Paragraph Two: Said respondent is now, and for more than two years last past has been, engaged in operating a collection agency and in collecting accounts owed to business and professional individuals, partnerships, and corporations, including doctors, dentists, garages, and grocery stores, upon a commission basis contingent upon collection. Many of these accounts are sent to respondent from persons residing in states other than California. Most of respondent's said accounts are in the western states of Oregon, Washington, Wyoming, and California, and the creditors are scattered about in many states.

Paragraph Three: Said respondent, in the course and conduct of his said business, attempts to ascertain the current addresses of persons from whom he is endeavoring to collect money due his clients, the names and addresses of the present employers of such persons and other information about such persons. For this purpose he has used and now uses double post cards which are mailed in bulk by said respondent to his agent in Washington, D. C., who, in turn, mails said post cards to the addressees located in various states of the United States. One part of the card is addressed to the debtor with the following message:

“Return to

“Business Research,

“703 Albee Building,

“Washington 5, D. C.”

The card reads:

“Washington, D. C.

“To Addressee:

“To enable us to complete our records it is necessary that you furnish the information requested on the attached card.

“Do this at once and mail to us.

“BUSINESS RESEARCH,

“By D. BERNSTEIN,

The other or “reply” part of the post card is addressed to “Business Research, 703 Albee Building, Washington 5, D. C.,” and is intended to be detached, filled out and mailed by the debtor. The following is a copy:

“Subject .....  
 “Subject’s Address.....  
 “Subject’s Employer.....  
 “Address .....  
 “Monthly Salary.....Does this  
     include room, board or services?.....  
 “Employed Since (Approximate Date).....  
 “Own Home?.....Rent?.....Own Auto?....  
 “If married, spouse’s name.....  
 “Spouse’s employment, if any.....  
 “Number of dependents.....  
 “Your name.....”

Along the right side of the card a box of figures similar to the arrangement appearing on “punch cards” commonly used for statistical purposes is printed. Such cards as are completed and mailed to the Washington, D. C., address are forwarded

from Washington, D. C., by the respondent's agent to respondent in the State of California.

Through the use of the name "Business Research" and the form and phraseology of the cards, respondent represents that he is engaged in conducting a business research bureau or office or in compiling business and labor statistics and that information requested is for such purposes.

Paragraph Four: The aforesaid representations and the implications arising therefrom are false and misleading. In truth and in fact, respondent is not conducting and is in no way connected with any research bureau or any business or labor statistical office. The respondent's sole purpose in sending the post cards is to obtain information for use in connection with the collection of unpaid accounts. The respondent is not engaged in any other business.

Paragraph Five: The method used by respondent in ascertaining the location of debtors is known as "skip tracing." Said respondent has no office in Washington, D. C., and employs an agent for the sole purpose of distributing the double post cards, hereinbefore described, to locate the debtors and to get as much information as possible in order to make a recovery of money for the creditor who has employed said respondent for that purpose. This subterfuge is used to get the desired information because if respondent should write to them in the name of the creditor or in the name of Affiliated Credit Exchange the debtor never would answer.

Paragraph Six: The use by said respondent, as

hereinabove set forth, of the false, deceptive and misleading representations and designations has the capacity and tendency to mislead and deceive many persons to whom the said cards are sent into the erroneous and mistaken belief that the respondent is engaged in conducting a research bureau or office or in compiling business and labor statistics, and to induce the recipients thereof to give information to said respondent which otherwise they would not supply.

### Conclusion

The aforesaid acts and practices of respondent are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

### Order

It Is Ordered that the respondent, David Bernstein, an individual trading and doing business as Affiliated Credit Exchange and as Business Research, or trading under any other name or trade designation, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the use of post cards or other written or printed material in carrying on the business of collecting or aiding in the collection of debts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Business Research,"

or any other word or words of similar import, to designate, describe or refer to the respondent's business; or otherwise representing, directly or by implication, that the respondent is engaged in research in business or in other forms of research.

2. Representing, directly or by implication, that the respondent's said business is other than that of collecting accounts or debts, or that the information sought by means of the respondent's devices is for any purpose other than for use in the collection of accounts or debts.

3. Representing, for the purpose of misleading debtors or others as to the respondent's place of business, that his business is located in Washington, D. C., or any place other than its actual location.

It Is Further Ordered that respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

By the Commission.

[Seal]     /s/ WM. P. GLENDENING, JR.,  
                                 Acting Secretary.

Initialed: J.M.M., W.A.A., L.B.M., J.C., S.J.S.

Issued July 9, 1951.

## Certificate

This is to certify that the following pages and related exhibits are a transcript of hearings before the Federal Trade Commission in the matter of:

Docket No.—5804.

Case Title—Affiliated Credit Exchange and Business Research.

Place—Los Angeles, California.

Date—November 6, 1950.

Pages Numbered 1 to 38, inclusive: which were had as therein appears, and that this is the original transcript thereof for the files of the Commission.

ELECTREPORTER, INC.,  
Official Reporter.

By /s/ WAYNE BIRDSSELL,  
Vice-President.



United States of America  
Before Federal Trade Commission

[Title of Cause.]

PROCEEDINGS

Trial Examiner Haycraft: This is the initial hearing in Docket 5804, entitled Federal Trade Commission versus David Bernstein, an individual trading and doing business as Affiliated Credit Exchange and Business Research, and we are meeting in Los Angeles, California, at 10:00 o'clock a.m. before Everett F. Haycraft, duly appointed and qualified officer of the said Commission, pursuant to an order of the Commission. Only those persons who have legally entered their appearances will be permitted to participate in this proceeding.

Under the rules the Trial Examiner is authorized to hold conferences before or during the trial for the settlement and simplification of the issues. I will ask, Mr. Brookfield, whether you wish to make such a request?

Mr. Brookfield: Yes, if your Honor please. Judging from the correspondence that has gone on between Mr. Mooslin and myself, there does not seem to be any great amount of difference in the testimony, and I think if I may talk with him a few minutes we may be able to arrive at a basis of settlement that will obviate the necessity of an extended hearing.

Trial Examiner Haycraft: Very well. That is the reason I didn't make any extended remarks in opening the case. I should probably say to you that

it is an alleged violation [3\*] of Section V of the Federal Trade Commission Act. So I will grant a recess. How much time do you think you want—15 or 20 minutes?

Mr. Brookfield: I imagine so.

Trial Examiner Haycraft: I will accordingly give you a recess of 15 minutes. You may confer with counsel and see whether or not you can agree upon a stipulation of facts.

Mr. Brookfield: All right, thanks.

(A short recess was taken.)

Trial Examiner Haycraft: Proceed.

Mr. Brookfield: I will call Mr. David Bernstein.

### DAVID BERNSTEIN

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Trial Examiner Haycraft: Give the reporter your full name and address.

The Witness: David Bernstein, 6332 Whitsett Avenue, North Hollywood.

### Direct Examination

By Mr. Brookfield:

Q. What is your business connection, Mr. Bernstein?

A. I am a collection agency operator.

Q. You are located in the City of Los Angeles?

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\* Page numbering appearing at top of page of original Reporter's Transcript of Record.



(Testimony of David Bernstein.)

A. Yes, sir, at 326 West Third Street. [4]

Q. You operate as an individual?

A. Yes, sir.

Q. An individually owned agency?

A. Yes, sir, doing business as Affiliated Credit Exchange.

Q. In connection with your collection agency, do you represent clients located in various parts of the United States?

A. Yes, sir.

Q. Will you tell his Honor briefly how you handle those claims for your clients?

A. Well, we process them in different manners, through correspondence——

Q. I don't mean the actual collection. How do you solicit your accounts?

A. Well, we solicit by personal contact, men in the field. We also have listings in recognized license books.

Q. Do you solicit by mail, too?

A. No.

Trial Examiner Haycraft: You mean you don't write letters to the prospects, you don't have a mailing list that you write letters to?

The Witness: No, sir, we don't have any mailing campaign in the solicitation of business.

Q. (By Mr. Brookfield): You do, however, employ men who personally solicit other collection organizations or agencies? [5]

Mr. Mooslin: I would like to object to the terminology "employ." I appreciate your intent in the question, but will you phrase it without using the word employment?

(Testimony of David Bernstein.)

Trial Examiner Haycraft: Well, the witness has stated that they made solicitation by personal contact by men in the field. Just go on and explain that further. How do you employ these men? How do you get the men in the field to do what you do? Do you write to them? Are they employees or are they independent?

The Witness: They are independent contractors, sir. They are independent contractors, and they are advised in the inception of the type of accounts that we are interested in, and so forth. They are independent contractors and they solicit in various areas in Southern California and mail the accounts to us, the business, as we call it.

Is that the answer?

Mr. Brookfield: I think that covers it.

Trial Examiner Haycraft: How do you arrange these contacts with the men that make the contact with the accounts?

The Witness: You mean with the clients?

Trial Examiner Haycraft: Yes.

The Witness: That is what we call cold turkey.

Trial Examiner Haycraft: Tell us what cold turkey [6] is.

The Witness: Well, that means that in that area, wherever it might be, that if this man is a man that specializes in professional accounts——

Trial Examiner Haycraft: And he has a collection agency that you are talking about and he is the man who collects the accounts?

The Witness: Oh, no, he just solicits the new

(Testimony of David Bernstein.)

business. He doesn't handle the collection end of it at all. That is the collection. You asked me about the men, how we get our business, how we get our money on accounts.

Mr. Brookfield: We haven't got to collecting the money yet.

Trial Examiner Haycraft: We haven't got to that.

The Witness: Oh, I see.

Trial Examiner Haycraft: How do you make contact with the man who solicits the accounts? You say he is an independent contractor. How do you contact him and arrange with the independent contractor?

The Witness: Well, we are pretty well known in the field. I have been in the collection business here since 1923, and the men come to us in reference to going to work on that basis.

Trial Examiner Haycraft: Do you want to develop that any farther? [7]

Q. (By Mr. Brookfield): Only to the extent—These men are paid on a percentage rate, or something like that? They are not paid a salary?

A. No, they are not paid any salary and no expense, no traveling expenses, and so forth. We have a rate; we pay so much on account to those men. Is that clear?

Q. I think that covers that particular point.

Trial Examiner Haycraft: I think I understand it a little better than I did anyway.

The Witness: Well, it is a little specialized endeavor.

(Testimony of David Bernstein.)

Trial Examiner Haycraft: You see, I am not familiar with it. That is the reason I ask so many questions.

The Witness: Yes.

Q. (By Mr. Brookfield): Now, Mr. Bernstein, approximately how many of these men do you have traveling at various times?

A. Oh, five or six men.

Q. They travel both in California and in other states, too? A. Yes, sir.

Q. And that is all the time you have been in this business? A. Yes, sir.

Q. They solicit accounts from California and other states other than California?

A. Yes, sir. [8]

Trial Examiner Haycraft: You mean from people in other states, is that what you mean?

Q. (By Mr. Brookfield): From creditors in those states?

A. Yes, creditors. They contact creditors.

Q. And, Mr. Bernstein, the debtors of these creditors, are they located both within and without the State of California, too?

A. Oh, yes, they are all over.

Q. In the course and conduct of your collection business, do you have occasion to write to debtors who are located within and without the State of California? A. Yes, sir.

Q. That is a continuous process from the time you get the accounts until you have either collected them or given them up? A. Yes, sir.

(Testimony of David Bernstein.)

Q. Mr. Bernstein, generally what type of business people are the creditors whom you represent, or is there any particular type?

A. We don't specialize. We handle business for doctors, dentists, garages, grocery stores, anything that is legitimate that is backed up by evidence of a debt and so certified to us in writing.

Q. Do you handle any accounts with chain stores? [9]           A. No.

Q. No nationally advertised stores?

A. No, sir.

Q. In the course and conduct of your collecting business, do you have to make attempts to locate these debtors?           A. Oh, yes.

Q. In the course of locating these debtors, do you use what is commonly known as skip tracers?

Trial Examiner Haycraft: Better define that. I don't know what a skip tracer is.

Q. (By Mr. Brookfield): Well, do you use letters, postcards rather——

Mr. Brookfield: I will ask, your Honor, to be marked for identification Commission's Exhibits——

The Witness: You mean whether we use that card?

Q. (By Mr. Brookfield): Yes.

A. Sure we do.

Q. Is this what is commonly known as a skip tracer?

A. Well, particularly a skip tracer is an individual in your office who uses the telephone to try



(Testimony of David Bernstein.)

to locate this party or that party. These are what we call tracing forms.

Q. Tracing forms?

A. The word "skip tracer" ordinarily refers to an individual. That is why I hesitated there. [10]

Q. I want his Honor to get the whole picture, if possible. A. Yes, tracing form.

Trial Examiner Haycraft: A skip tracer is a man, you say, who sits at the telephone and calls around different places trying to locate people?

The Witness: Well, your client gives you an account, we will say a doctor gives us an account against a certain party, a balance due of a hundred dollars for an operation, and gives us a certain address, when the account comes to us and we find after a little investigation that the man has moved, well, we will try to locate him, that is, we locate him by skip tracing, and we use the telephone or other means.

Trial Examiner Haycraft: You have an exhibit to be marked?

Mr. Brookfield: Yes, sir. Your Honor, I have here a double postcard, one side of which is addressed to Art Soulsby, Rock Springs, Wyoming, and the return part of the postcard is addressed to Business Research, 703 Albee Building, Washington, D. C. I ask that that be marked for identification as Commission's Exhibits 1-A and 1-B.

Trial Examiner Haycraft: That may be done.

(The papers referred to were marked Com-

(Testimony of David Bernstein.)

mission's Exhibits 1-A and 1-B for identification.)

Mr. Brookfield: I ask that a double postcard addressed on one side to A. F. Faulkner, Addressee, Girard, [11] Kansas, and the other side to the Business Research, be marked as Commission's Exhibits 2-A and 2-B.

Trial Examiner Haycraft: The same Business Research at Washington, D. C.?

Mr. Brookfield: Yes, sir, Business Research, 703 Albee Building, Washington, D. C.

(The papers referred to were marked Commission's Exhibits 2-A and 2-B for identification.)

Mr. Brookfield: I don't see any use of unduly burdening the record. I have here four other cards, all of them addressed to Business Research, 703 Albee Building, Washington, D. C., postmarked at various places in the United States. I ask that they be marked Commission's Exhibits 3, 4, 5 and 6.

Trial Examiner Haycraft: A and B?

Mr. Brookfield: They are separate cards. I don't want them A and B, because there is no return.

Trial Examiner Haycraft: No, there is no return, I see.

(The papers referred to were marked Commission's Exhibits 3, 4, 5, and 6 for identification.)

Q. (By Mr. Brookfield): You have seen these, Mr. Bernstein? I show you a return card addressed

(Testimony of David Bernstein.)

to Business Research on one side of the return and this Commission's Exhibit 1-A is addressed to Art Soulsby, [12] Rock Springs, Wyoming. Have you seen that card or a card identical with it before?

A. Well, this is the card used by us. I don't remember this.

Q. Over what period of time have you used that card?

A. We have used this card, I would say, about eleven or twelve years. Are those the cards I gave your investigator?

Q. Some of them are, yes.

A. I don't remember that offhand, but anyway, this is our card. This is the card we use. This is the card we mail out.

Trial Examiner Haycraft: What is that Business Research in Washington, D. C.? Is that a name you operate under?

The Witness: Yes, sir.

Mr. Brookfield: I am going to bring that out in just a minute, your Honor. I ask that the card be received in evidence.

Trial Examiner Haycraft: There is no objection?

Mr. Mooslin: No objection. Stipulate that it may be received.

Trial Examiner Haycraft: 1-A and 1-B will be received in evidence.

(The papers referred to, heretofore marked for identification Commission's Exhibits 1-A and 1-B, were received in evidence.) [13]



Washington, D. C.

To Addressee:

To enable us to complete our records it is necessary that you furnish the information requested on the attached card.

Do this at once and mail to us.

FEDERAL TRADE COMMISSION

DOCKET NO. 5804 EXHIBIT NO. 1A BUSINESS RESEARCH

THE MATTER OF *David Bernstein* By *D. Bernstein*DATE *11/6/50* WITNESS *Bernstein* By *D. Bernstein*

ELECTROREPORTER, INC., Official Report

Com. 1a By *Drummond*

FEDERAL TRADE COMMISSION

DOCKET NO. 5804 EXHIBIT NO. 1B

IN THE MATTER OF *David Bernstein*DATE *11/6/50* WITNESS *Bernstein*

ELECTROREPORTER, INC., Official Report

By *Drummond*

BUSINESS RESEARCH

703 Albee Building

WASHINGTON 5, D. C.

Com 1a



Subject: Art Soulsby

Subject's Address: .....

Subject's Employer: .....

Address: .....

Monthly Salary: ..... Does this include, room,  
board or services? .....

Employed since (approximate date): .....

Own home? ..... Rent? ..... Own Auto? .....

If married, spouse's name: .....

Spouse's employment, if any: .....

Number of dependents: .....

Your name: .....

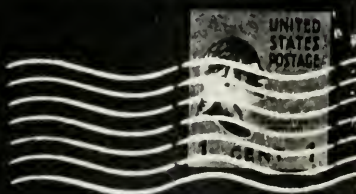
**DETACH BEFORE MAILING**

| Occup. | Sol. | Base | Mo. | Day | Yr. | Tec. | Lab. | Off. | Pro. | Sten. | Blk. | Sls. |
|--------|------|------|-----|-----|-----|------|------|------|------|-------|------|------|
| 0      | 0    | 0    | 0   | 0   | 0   | 0    | 0    | 0    | 0    | 0     | 0    | 0    |
| 1      | 1    | 1    | 1   | 1   | 1   | 1    | 1    | 1    | 1    | 1     | 1    | 1    |
| 2      | 2    | 2    | 2   | 2   | 2   | 2    | 2    | 2    | 2    | 2     | 2    | 2    |
| 3      | 3    | 3    | 3   | 3   | 3   | 3    | 3    | 3    | 3    | 3     | 3    | 3    |
| 4      | 4    | 4    | 4   | 4   | 4   | 4    | 4    | 4    | 4    | 4     | 4    | 4    |
| 5      | 5    | 5    | 5   | 5   | 5   | 5    | 5    | 5    | 5    | 5     | 5    | 5    |
| 6      | 6    | 6    | 6   | 6   | 6   | 6    | 6    | 6    | 6    | 6     | 6    | 6    |
| 7      | 7    | 7    | 7   | 7   | 7   | 7    | 7    | 7    | 7    | 7     | 7    | 7    |
| 8      | 8    | 8    | 8   | 8   | 8   | 8    | 8    | 8    | 8    | 8     | 8    | 8    |
| 9      | 9    | 9    | 9   | 9   | 9   | 9    | 9    | 9    | 9    | 9     | 9    | 9    |

Return to

**BUSINESS RESEARCH**

703 Albee Building  
WASHINGTON 5, D. C.



Art Soulsby  
Rock Springs  
Wyo.



(Testimony of David Bernstein.)

Mr. Brookfield: Your Honor, it is stipulated, I believe, between Mr. Mooslin and myself that 1-A and 1-B, 2-A and 2-B, 3, 4, 5, and 6, may be received in evidence.

Trial Examiner Haycraft: All right. All of the exhibits beginning with 1-A are received in evidence.

(The papers referred to, heretofore marked for identification Commission's Exhibits 2-A, 2-B, 3, 4, 5, and 6, were received in evidence.)



Subject: K. F. Faulkner

Subject's Address: \_\_\_\_\_

Subject's Employer \_\_\_\_\_

Address: \_\_\_\_\_

Monthly Salary:..... Does this include, room  
board or services?.....

Employed since (approximate date):

Own home?.....Rent?.....Own Auto?.....

If married, spouse's name: \_\_\_\_\_

Spouse's employment, if any: None

Number of dependents: \_\_\_\_\_

Your name: \_\_\_\_\_ DATE: \_\_\_\_\_

DETACH BEFORE MAILING

Return to

## BUSINESS RESEARCH

703 Albee Building

WASHINGTON 5, D. C.

1947

DATE 11/6/50

THE COMMISSION  
COMMISSION'S EXHIBIT NO. 28  
WASHINGTON

4 D. C. *David Bernath* JAN 26 1964 7-PM  
*Bernath*  
 DIRECTOR, INC. 1964  
 A. *Bernath* Faulkner  
~~Office~~  
~~Keller~~

~~A. S. Faulkner~~  
~~Chief~~  
~~Manager~~

Alva



UNITED STATES  
POSTAGE  
STAMP

3





Washington, D. C.

o Addressee:

To enable us to complete our records it is necessary that  
 ou furnish the information requested on the attached card.

Do this at once and mail to us.

**BUSINESS RESEARCH**

By

*[Handwritten signature]*



**BUSINESS RESEARCH**

**703 Albee Building**

**WASHINGTON 5, D. C.**



FEDERAL TRADE COMMISSION  
DOCKET NO. 5804  
COMMISSION'S EXHIBIT NO. 1

IN THE MATTER OF David Bernstein EXHIBIT  
DATE 11/1/70

DATE 11/6/50 WITNESS Resurrection  
ELECTRERPORTER, INC., Official Reporter  
By 9

**BUSINESS RESEARCH**

**703 Albee Building**

**WASHINGTON 5, D. C.**

12/1/45  
 50/100  
 1-109/11

53

Subject: **ANNA TILLIG**

Subject's Address: Blanchard

Subject's Employer: None

Address: none

Monthly Salary: \$150.00

boards of services? *Yes, some of them*

Employed since (approximate date) 1964

Own home? Yes Rent? Yes Own Auto? Yes

If married, spouse's name: John

Spouse's employment, if any: none

Number of dependents: none

Your name: Anne Hill

DETACH BEFORE MAILING

**WANT TO REPORTER, INC. Official R-1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838,**

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5050



Subject: **Anna Tillig**  
 Subject's Address: **Leesley, West**  
 Subject's Employer: **none**  
 Address: **—**  
 Monthly Salary: **None** Does this include work  
 board or services?  
 Employed since (approximate date):  
 Own home? **NO** Rent? **NO** Own  
 married, spouse's name:  
 Spouse's employment, if any:  
 Number of dependents: **1**  
 Your name: **Bona Tillig**

FEDERAL TRADE COMMISSION  
 3801 Wisconsin Avenue, N.W.  
 WASHINGTON, D.C. 20548  
 DATE OF REPORT: **11/15/45**  
 ELECTROREPORTER, INC., Official Reporter





62

DOCKET NO. 5804

COMMISSIONER'S EXHIBIT NO.

IN THE MATTER OF

David Remolina

DATE 4/6/50

## NOTES

*Bermatine*

THE REPORTER, INC., Official Reporter

U.

*Drummond*

## BUSINESS RESEARCH

### 703 Albee Building

**WASHINGTON 5, D. C.**



1-8711

13

Subject Carl Holland

Subject's Address: 47- Water Street

Subject's Employer: None

Address \_\_\_\_\_

Monthly Salary: \$45.00 Does this include work  
board or services? No

Employed since (approximate date):

Own home? Yes Rent? Yes Own Auto? Yes

If married, spouse's name:

Spouse's employment, if any:

Number of dependents

Yours truly, Frank H. Brown

## DETACH BEFORE MATING

FEDERAL TRADE COMMISSION  
IN THE MATTER OF  
DATE 11/6/50  
WITNESS  
ELECTROREPORTER, INC. Official Reporter  
By: [Signature]

[illegible]

5





63

COMMISSIONER'S EXHIBIT NO. 8

David R. ... MAR 6

WITNESS B. 1903

ELECTREPORTER, INC., Office

B. Domestic

## BUSINESS RESEARCH

**703 Albee Building**

**WASHINGTON 5, D. C.**

6-19  
 6-19  
 6-19  
 6-19

Subject: MRS. ANGELA HISE

Subject's Address: 810 M. St.

Subject's Employer: None

Address: \_\_\_\_\_

Monthly Salary None Does this include room  
board or services? Yes

Employed since (approximate date):

Own home? no Rent? no Own Auto? no

If married, spouse's name: James E. Smith OF

Spouse's employment, if any:

Number of dependents: none

Your name: Amala E.

DETACH BEFORE MAILING

DEPARTMENT OF COMMERCE

Booked for \$704  
IN THE MATTER OF  
Daniel Rungtun  
- 19 -  
WITNESS  
DATE 1/6/58

1/6/50 WINNER: *Robertson*  
ELECTREXPORT CO., INC. Official Publisher

*Document*

[illegible]



(Testimony of David Bernstein.)

Mr. Brookfield: That is for every one of them?

The Witness: Yes, those are ours.

Q. (By Mr. Brookfield): Mr. Bernstein, referring to the Commission's Exhibit——

A. These are also ours, your Honor.

Q. ——Commission's Exhibit 1-A, which is the one I first showed you, will you tell his Honor how that is used in your business?

A. This is a card we got up, we print and we use. We don't sell it. We don't give it away. We don't peddle it in any way whatsoever. This card here involves a man by the name of Art Soulsby. Offhand, your Honor, I just can't tell you what the debt is for or who the original creditor was. I could, because we have our file number there and I could check it and see whether it is a doctor bill or a grocery bill or so forth and so on.

This man owes some sum of money to somebody in or [14] out of California on some debt. That has been assigned to us for collection. We use a written assignment. We must have and insist on a written assignment of every account that is turned over to us, grocery bills, doctor bills, garage bills, all that kind of thing.

We use this name Business Research with the Washington, D. C., address. We mail these cards out to these people after analysis of the account, where there has been no response or it might appear that the party has moved. The purpose is to locate the party and get as much information as



(Testimony of David Bernstein.)

we possibly can in order to make a recovery for the person, the creditor who has employed us.

These cards are sent out at our discretion, of course, in the different process of collection agency work.

Q. Mr. Bernstein, in Washington, D. C., you have an agent who receives these cards and when a sufficient number of them are received mails them to you? A. Yes, we mail them to him.

Q. You mail them to somebody?

A. He mails them, and then when the answers come back they are gathered and mailed back to us, that is right.

Q. That is Mr. Smith, isn't it?

A. I believe it is, yes, a telephone answering service there.

Trial Examiner Haycraft: What is the name of it? [15]

Mr. Brookfield: Mr. Smith in the Albee Building.

Trial Examiner Haycraft: Well, Smith is quite a common name. Does he have a first name?

Mr. Brookfield: Your Honor, I don't know. Mr. Bernstein can tell me, I think.

Trial Examiner Haycraft: Do you know what his name is?

The Witness: I don't know his first name. Mr. Smith has no connection with us whatsoever, your Honor, except that he handles the mail passing to and fro. I don't know his first name. It is Mr. Smith all right.

(Testimony of David Bernstein.)

Trial Examiner Haycraft: How is he paid for what he does?

The Witness: We pay him so much a month regardless of the amount of business he handles for us in depositing these cards in the mail and when they come back mailing them back to us.

Trial Examiner Haycraft: Out of that he pays his own office rent?

The Witness: Well, do you want me to go into that, what little information I know about it? He has an office there where he handles telephone calls and letters for anybody who will pay him a fee of so much per month, that type of a set-up, where people do not have their own offices and stuff like that, and he perhaps might have five or six hundred [16] persons that he services not only in this respect but taking telephone calls and correspondence and telephone answering service, that type of thing. He has a very large plant, I understand.

Q. (By Mr. Brookfield): Mr. Bernstein, with reference to mailing these cards, why do you send them to Washington and use the name Business Research?

A. Well, just an idea, just an idea in the hope that we will get the information, because if we wrote to them in the name of the creditor or if we wrote to them in the name of the Affiliated Credit Exchange, they never would answer, and we are trying to find out where they live and where they work so we can take the matter up with them and find out why they don't pay their legitimate debts.

(Testimony of David Bernstein.)

Q. So that your purpose in using the name of Business Research with the Washington address is——

A. To get the information which is on that card.

Q. That you would not be able to get otherwise, is that correct, or that you don't think you would get so readily otherwise? A. Correct.

Q. You, of course, don't maintain any kind of business research offices or anything like that?

A. No, sir. [17]

Q. Your only business is the business of collecting accounts? A. Right.

Trial Examiner Haycraft: Do you have other offices located all over the country?

The Witness: No, sir.

Q. (By Mr. Brookfield): This is the only card which you have used since you have been using this form of tracing card, is that correct?

A. Yes, sir.

Trial Examiner Haycraft: Why do you use Washington, D. C.?

The Witness: Well, we use Washington, D. C. It is across the Continent. We have a lot of accounts in western states, Oregon, Washington, Wyoming, and so forth, and the remoteness of it, the possibility that coming from another area it will give us that information, as against using Los Angeles.

Q. (By Mr. Brookfield): It is a fact, is it not, that most of your debtors are in this area, in the western area? A. Yes.

(Testimony of David Bernstein.)

Q. In other words, the western states, California or nearby and bordering states?

A. Yes, the big percentage, yes, 90 per cent would be, yes.

Q. Whereas the creditors are located all over?

A. Well, the creditors are scattered about, [18] yes.

Trial Examiner Haycraft: Well, are the creditors located in the same general area as your debtors?

The Witness: Well, in the inception.

Trial Examiner Haycraft: That is what I mean.

The Witness: And then we find that debtor has moved from Wyoming to Arizona, or Arizona back to New Mexico, so it is one of those things. What we are doing, we are just chasing those debtors to catch up with them and make them pay their just debts.

Q. (By Mr. Brookfield): Mr. Bernstein, approximately, if you are able to tell me, how many returns would you get from, say, the mailing of 100 of those cards? Approximately what would be the percentage of returns?

A. Well, it seems that there is sort of a law of average on skip tracing methods, and if we average ten per cent on one form and ten per cent on something else, we figure that is a pretty good average, about ten per cent.

Q. So each ten of these that are mailed out you figure from your experience that you would receive about ten answers?

(Testimony of David Bernstein.)

Trial Examiner Haycraft: Each hundred you mean?

Q. (By Mr. Brookfield): Each hundred?

A. That is right.

Trial Examiner Haycraft: Does the fact, [19] Mr. Bernstein, that the Government sends out a lot of questionnaires from Washington, D. C., and other organizations there, have anything to do with your selection of Washington, D. C., as the place for the sending out of this questionnaire on this postal card?

The Witness: No, I don't think so, and if I could give an answer which might sound logical, it is this: That tracer forms have been used for many, many years, long before we got the idea of making up our own little device, and they all practically come from Washington, so we just put Washington on.

Trial Examiner Haycraft: Sort of a custom.

The Witness: Sort of a practice or a custom.

Trial Examiner Haycraft: Go ahead, Mr. Brookfield.

Q. (By Mr. Brookfield): Mr. Bernstein, along that line, you know it is a fact, do you not, that the Government does send out all kinds of forms?

Mr. Mooslin: I am going to object to that.

The Witness: I know that.

Trial Examiner Haycraft: I am sorry I started this line of examination. It occurred to me I had seen a lot of questionnaires going out of Washing-



(Testimony of David Bernstein.)

ton, and I thought maybe that was the reason. I think everybody knows that.

The Witness: Well, my answer to that would be—— [20]

Mr. Mooslin: Wait a minute.

Mr. Brookfield: I withdraw the question.

The Witness: Mr. Counselor, my answer to that would be this, that I can make this statement, that if all the Federal Trade Commission is worrying about is that I am mailing it from Washington, I am willing to mail it from Chicago, if that is the point involved. It never struck me that way before, and I can readily and easily shift to Chicago.

Mr. Brookfield: I can't be party to any agreements, of course.

The Witness: We rely a great deal on the wording of this card, so far as any attempts of misrepresentation, any foundation laid for misrepresentation that would make them think that this is from a Governmental agency, if that is the point.

Trial Examiner Haycraft: Off the record.

(Discussion off the record.)

Trial Examiner Haycraft: On the record.

Mr. Brookfield: Mr. Examiner, Mr. Mooslin and myself, in view of the answer previously filed, hereby stipulate that all of the facts in the first five paragraphs of the complaint, with the exception of what may be a conclusion, which is the first paragraph of Paragraph V, aforesaid representation and employment arising therefrom are



(Testimony of David Bernstein.)

false and misleading, that particular part of Paragraph V is [21] objected to as a conclusion rather than a fact, and with that exception the first five paragraphs of the complaint are stipulated.

Trial Examiner Haycraft: All right. Is that correct, Mr. Mooslin?

Mr. Mooslin: That is correct.

Trial Examiner Haycraft: I am very glad, however, that you did get Mr. Bernstein to explain the business. If he gives us a little background. I think I will be in a better position to render a decision in this case by this testimony.

Mr. Brookfield: If your Honor please, unless I have inadvertently overlooked anything in connection with Mr. Bernstein's operation, that is all the questions I have.

Trial Examiner Haycraft: Well, there was one thing I thought might possibly be shown, and of course it may be covered by the complaint, that is, how the collection is actually made. That is, does the money come direct from the debtor to Mr. Bernstein and does he take his commission out of that and forward the rest of it to the creditor?

Mr. Brookfield: I think, your Honor, to bring that in, which is part of their business, I think I will ask Mr. Bernstein that.

Q. (By Mr. Brookfield): Mr. Bernstein, those accounts that you handle, how are [22] they handled in your office? Do you purchase the accounts?

A. No, sir, they are assigned to us for the purpose of collection and our fees are specified in the

(Testimony of David Bernstein.)

written assignment. I believe I furnished your office with that.

Trial Examiner Haycraft: Do you have a copy of the written assignment?

Mr. Brookfield: Yes, sir. Would you like to have it in the record?

The Witness: We do not buy any accounts. I am not licensed, in fact, to buy accounts. We take them on a so-called contingent basis, your Honor.

Mr. Brookfield: Mr. Reporter, will you mark these Commission's Exhibits 7-A and B?

(The papers referred to were marked Commission's Exhibits Nos. 7-A and 7-B for identification.)

Mr. Brookfield: 7-A is a contract and 7-B is a list which is furnished with the contract, furnished by Mr. Bernstein to his creditors.

The Witness: I would like to use the word written power of attorney, instead of a contract, because that is all it is really. It is a written power of attorney to represent the man, don't you think so?

Q. (By Mr. Brookfield): Mr. Bernstein, I show you Commission's Exhibits 7-A and 7-B for identification and I will ask you to tell His [23] Honor whether you have seen those papers before and what is the nature of them?

Trial Examiner Haycraft: And what use he makes of them. I want to know what use do you make of them. Tell me what you use them for.

(Testimony of David Bernstein.)

The Witness: That is used to—the large sheet is what we call the listing.

Q. (By Mr. Brookfield): 7-B?

A. 7-B is the listing sheet. Do you want me to go into detail on that? Well, the member's name over here would be the client or the customer, the person, the creditor who turns over to us, whether it is a groceryman or doctor or a dentist or a garage operator, and so forth, who turns over those accounts. His accounts, the people who owe him money, the names are listed here and the addresses and locality, the city and state, the amount that is due, the date of last charge, and the kind of account, whether it was a note, a book account or a judgment or what have you, or any other information of this kind, and with that listing blank we list them right down, listing the name and address and the amount of the accounts the man turns over to us. That is the listing blank.

Trial Examiner Haycraft: Now the other?

The Witness: At the same time that this is [24] completed and everything is listed, before we budge we give the client a copy and he signs this for us.

Q. (By Mr. Brookfield): That is 7-A.

A. That is the assignment. That is the assignment. That is where the creditor vests in us certain rights and so forth, together with duties and obligations between us to go after these guys and collect the money for him. Is that clear?

Trial Examiner Haycraft: Yes. That is what I wanted.

(Testimony of David Bernstein.)

Mr. Brookfield: I ask that Commission's Exhibits 7-A and B be received in evidence.

Trial Examiner Haycraft: There will be no objection, Mr. Mooslin?

Mr. Mooslin: No objection.

Trial Examiner Haycraft: Commission's Exhibits 7-A and B for identification are received in evidence.

(The documents referred to, heretofore marked for identification Commission's Exhibits 7-A and 7-B, were received in evidence.)





COPY

## AFFILIATED CREDIT EXCHANGE

EXECUTIVE OFFICES:

328 WEST THIRD STREET

LOS ANGELES 13, CALIFORNIA

In consideration of services to be rendered, the undersigned assigns to the Affiliated Credit Exchange, 328 West Third Street, Los Angeles, Calif., the accounts submitted herewith. The undersigned authorizes the Exchange to act as its attorney-in-fact, for him and in his name, place and stead, to collect and receive all sums of money which are warranted to be legally due and owing to the undersigned from the persons and in the amounts appearing on the list of accounts assigned herewith. Said list of accounts is declared to be a part of this agreement. The Exchange is empowered to endorse checks and all other forms of remittance and to adjust, settle, sue, and to perform all acts necessary for the collection and settlement of the accounts, with the distinct understanding that if there is no collection or settlement there is to be no commission charged.

The undersigned agrees to pay the Exchange a commission of fifty per cent of the first one hundred dollars collected in the aggregate, and twenty per cent thereafter, except on accounts that are traced, outlawed, forwarded, collected in installments, or through attorneys or legal action, the commission shall be fifty per cent. The undersigned agrees to pay the Exchange the full commission on all monies or its equivalent paid to the undersigned, or upon acceptance by the undersigned of a new obligation of debtor or when further proceedings are ordered held or stopped. Where the undersigned interferes with the collection of any account or fails to furnish evidence of indebtedness or proof of debt or fails to furnish information relative to direct payments made to the undersigned or where other forms of settlement are made, in such cases the commission of fifty per cent will be paid by the undersigned.

When any debtor makes payment direct to the undersigned or otherwise settles direct, the undersigned agrees to report same to the Exchange and the undersigned authorizes the Exchange to charge against any monies coming into its hands any monies due the Exchange from the undersigned. The undersigned agrees to furnish, in writing, a complete report of all monies paid to him in full or in part as well as all arrangements for the settlement of any account, of whatever nature, of all accounts, prior to a settlement or report by the Exchange. The Exchange likewise agrees to furnish reports, at any time, upon written request. A fee of fifty cents on each account listed is authorized to be deducted and paid to the Exchange out of any money recovered under this agreement for listing and/or tracing expenses advanced by the Exchange. All accounts assigned shall stand as security for commissions due the Exchange. All commissions are payable at Los Angeles, Calif. The Exchange agrees to release accounts not in the process of adjustment, collection, or settlement, upon written request. This agreement subject to approval and acceptance by the Exchange at Los Angeles, Calif.

No agent has authority to alter this agreement verbally or in writing or to make any agreement relative to terms of agreement or modes of collecting or to receive or to receipt for any money from debtors or the undersigned and the Exchange is not bound by any other stipulation or representation.

FEDERAL TRADE COMMISSION

ALL COURT COSTS, ATTORNEY FEES AND COLLECTION EXPENSES TO BE PAID BY DEBTOR TO THE EXCHANGE

Kind of business

Name of firm

State

Signed at 11/4/50

Title

Witness

Date

WITNESS

FOR THE EXCHANGE, INC., OFFICIAL SECRETARY

1-1746/48  
Alme

1-19911

5804  
TO BE PAID BY DEBTOR TO THE EXCHANGE

Brentin

Brentin





MEMBER'S NAME

BUSINESS

ADDRESS

NAME OF REPRESENTATIVE

ATTACH PRINTED LETTERHEAD OR CARD  
OF ADDRESS

| NO. | NAME OF DOCTOR | STREET ADDRESS | CITY OR TOWN | RATE | Amount  |      | Date of Last<br>Change | Date of Last<br>Exam | When Issued <sup>1</sup> and Date<br>of Expiration <sup>2</sup> of License<br>After Expiration <sup>3</sup> of License<br>After Expiration <sup>4</sup> of License |
|-----|----------------|----------------|--------------|------|---------|------|------------------------|----------------------|--|
|     |                |                |              |      | Balance | Cost |                        |                      |  |
| 1   |                |                |              |      |         |      |                        |                      |  |
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*Perman 10-12-1941*  
*1-1941*

FEDERAL TRADE COMMISSION  
DOCKET NO. 5804  
IN THE MATTER OF *Perman*  
DATE 4/6/50  
EXHIBIT NO. 7B  
EXHIBIT NO. 7B  
EXHIBIT NO. 7B

Do not send us any document or photograph unless you  
are sure of the validity of which you would not want to.

NO COLLECTION — NO CHARGE

Do not list other regular address of unknown address.  
Always give exact number.



(Testimony of David Bernstein.)

Trial Examiner Haycraft: Then when the money comes in, it is handled according to this agreement?

The Witness: That is right. That is right. Some debtors pay us, some debtors pay the client and the client [25] sends us our commission or vice versa, make reports to us, statements a month later, twice a month or whatever it might be. It is a traffic back and forth.

Mr. Brookfield: I have no other questions.

Trial Examiner Haycraft: Mr. Mooslin, do you have anything you want to ask?

Mr. Mooslin: Just a couple of questions.

### Cross-Examination

By Mr. Mooslin:

Q. The solicitors or the men that pick up the account, are they paid on an hourly basis, a monthly basis, or on a piece basis?

A. Well, they are not paid on any hourly basis or monthly basis. As I said, they are not paid anything only on the basis of the number of accounts pursuant to classification. We pay more for MD accounts than we do garage accounts. We pay more for hospital accounts.

Q. There is a set price per account?

A. Yes, we have a rate schedule. I think you have a copy of that.

Trial Examiner Haycraft: Do you have any agreement, form of agreement?

(Testimony of David Bernstein.)

Mr. Brookfield: With the salesmen?

Trial Examiner Haycraft: Yes.

Mr. Brookfield: I don't think so. [26]

Trial Examiner Haycraft: With the solicitors.

Q. (By Mr. Mooslin): In other words, your solicitor does not have an interest in your collection of the account at all?

A. No, no. As a demonstration of that point, if it will clarify for His Honor, this, on hospitals we pay a dollar a name. A man gets a hundred accounts today and sends the business in and it is all set up so we can read it and sign it properly and so forth, we will air mail him a check for a hundred dollars, regardless of whether we collect an account on the entire list or whether we collect ten thousand on the list.

Q. That is what I wanted. Now, do your clients know that you utilize this form?

A. Nobody knows it.

Q. Do you inform your clients by way of an inducement that you have a peculiar or particular method of locating people? A. No, sir.

Q. Therefore you can service their accounts better than someone else because of your skip tracing form? A. No, sir.

Q. You use this but you don't sell it?

A. Don't give it away, don't sell it, don't peddle it in any manner, shape or form. We print them ourselves and so forth. [27]

Q. Do you use it for any other purpose, that form, other than your own interest?

(Testimony of David Bernstein.)

A. No, none whatsoever, never.

Mr. Mooslin: That is all.

Mr. Brookfield: Mr. Haycraft, you asked me whether I had a copy of the form of agreement with the solicitors.

The Witness: I think I gave it to the investigator.

Trial Examiner Haycraft: Well, it is not going to be much assistance in this case.

The Witness: No, I don't think it would be.

Trial Examiner Haycraft: Do you have——

Mr. Brookfield: I have copies of the assignments and things like that by the creditors.

Trial Examiner Haycraft: As I understand it from what you have just said, the solicitors are paid according to the type of account and they are paid on a flat fee basis?

The Witness: Yes, sir. Do I make myself clear in that?

Trial Examiner Haycraft: I think you have.

The Witness: Garage accounts we will say we pay fifty cents a name. If he comes in with a hundred, I will pay him \$50.00.

Trial Examiner Haycraft: You have got to have more than the name. Don't you have to have something as a basis for later on entering into a contract with the creditor? [28]

The Witness: Well, we of course mean, when we say "name," we mean contract.

Trial Examiner Haycraft: That is, they give



(Testimony of David Bernstein.)

the names of the accounts as in Commission's Exhibits 7-A and B?

The Witness: That is it.

Trial Examiner Haycraft: The solicitor, the man who gets the account, he doesn't know them?

The Witness: He is there. He has the man right there.

Trial Examiner Haycraft: Is he authorized to sign for you?

The Witness: As far as I know he has never—in fact, he has no authority to sign. Nobody else does.

Trial Examiner Haycraft: It has to be submitted to you, he sends the names and the contract to you?

The Witness: We have a form in which we make a typewritten list in duplicate which we send back to our customer. That is of course another process I didn't think of.

Trial Examiner Haycraft: Well, what I am trying to find out now is what the solicitor has to do with obtaining this Commission's Exhibit 7-A and B.

The Witness: He sees that it is executed and the man signs it right there in front of him and after he gets the list he mails it to us. [29]

Trial Examiner Haycraft: Does he get all the information, whatever is necessary?

The Witness: That is right, what we term the debt, whatever it may be for, and that sort of thing, that is right.

(Testimony of David Bernstein.)

Trial Examiner Haycraft: Then he doesn't sign anything?

The Witness: No, we acknowledge it from our office, because we make a duplicate list and send it back to the customer. That happens once in a while.

Trial Examiner Haycraft: And the name of the representative who solicited the accounts appears in the upper right-hand corner of 7-B, is that right?

The Witness: He must write his name in there, that is right. Then you have also the commission shown that he makes. We write the lists out and pay him by the number of accounts.

Trial Examiner Haycraft: All right. Is there anything else?

Mr. Brookfield: I have nothing further, your Honor.

If there are any of these other forms that you think should be in the record in order to make the story complete and Mr. Bernstein will send them to me, I think Mr. Mooslin and I can stipulate that they can be added to the record, if you so [30] desire.

Trial Examiner Haycraft: Well, that is up to you, if you want to do that.

Mr. Brookfield: I don't know of any other form except the ones you have inquired about. So with that I rest.

Trial Examiner Haycraft: And you rest, also?

Mr. Mooslin: Yes, we rest, also.

(Testimony of David Bernstein.)

The Witness: Might I say one thing?

Trial Examiner Haycraft: You may if you think your attorney will allow you.

The Witness: May I see one of those cards again, your Honor?

Trial Examiner Haycraft: I will give you the one that you talked about before.

The Witness: I think the main point has been overlooked. Pardon me, gentlemen. You know it has come up before in some of these things, the use of Washington, D. C., is an innuendo that we are resorting to a subterfuge. That is the basis of the whole thing, together with the fact whether as the collection agency operator I am engaged in interstate commerce.

There are two things to be proven in this case: First, subterfuge; and, second, interstate commerce. Now, I wouldn't say that the fact that this is mailed from Washington, D. C., on examination of this and the language therein, I [31] personally fail to see the claimed subterfuge that the Commission is sort of hanging its hat on now. On the question of subterfuge or any question in reference to subterfuge, that you have been asking me, if it is because I mailed them in Washington, D. C., my answer, if that is what you refer to, I will change it and mail them from Chicago.

Trial Examiner Haycraft: Why not from Los Angeles where you live?

The Witness: Why can't I mail them from Chicago if I am engaged in interstate commerce?

(Testimony of David Bernstein.)

Trial Examiner Haycraft: You are not located in Chicago.

The Witness: That point I am unprepared to argue, your Honor. I don't know anything about the law on that subject, but I will argue now about subterfuge in the language.

Trial Examiner Haycraft: I think that probably is the purpose of it.

The Witness: Pardon?

Trial Examiner Haycraft: I think probably that is the purpose of it. As I say, I am a little at a loss in this type of case myself.

The Witness: In the collection business you have to allow us a little bit of subterfuge to catch up with people who are a little bit backward and hesitant on paying just debts and move away, you have to allow us a little bit of that [32] thing you might call subterfuge.

Mr. Mooslin: Mr. Bernstein, excuse me for interrupting, but isn't it a matter of fact that you use a good deal of psychology in obtaining the information from the debtor?

The Witness: That is what the business is.

Mr. Mooslin: Doesn't the psychology of him receiving a card from out of the state, where a debtor knows that he is not lead him to believe that he has nothing to be afraid of in giving the information? Isn't that the psychological factor and the purpose of using the out-of-state card rather than that of a local card, where he might possibly suspect that someone is wanting to know his address?

(Testimony of David Bernstein.)

The Witness: Well, it brings me back to the same proposition there. If that is all the Federal Trade Commission wants, I will change the address. I will mail them from Washington, but that is not the point. The point is I am engaged in interstate commerce. That is not the point. I fail to see where an analysis of this card in the light of the way it is used and the historical background of the collection agency business, where there is subterfuge. There is nothing in there which would indicate any possibility of any connection with any governmental agency because it is Washington, D. C.

Trial Examiner Haycraft: Well, if there is nothing [33] else we will close the hearing, that is, close the taking of testimony at this place. When I get back to Washington, I will close the case formally, and if you do want to send me any other papers that you can find, Mr. Mooslin, I will put them in. I don't think it is necessary. I think we have all the facts.

Mr. Brookfield: Your Honor, the only other paper that I think would be pertinent, on the question that Your Honor asked Mr. Bernstein, would be that one you referred to, the contract with his solicitors.

The Witness: What would be material about that? If you want it you can have it. I will be glad to mail it to you.

Trial Examiner Haycraft: I will close the taking of testimony at this time and finally close the



case when I get back to Washington, and it will then take its usual course in being decided. I write what is known as the initial decision in this case. Before doing that, if counsel wish, I am required under the rules to extend you an opportunity to file with me a proposed finding and order. Now, if you wish to avail yourselves of that privilege you may do that under the rules.

Mr. Brookfield, counsel, has an opportunity, will have an opportunity to file with the Trial Examiner his proposed findings and order. If you want to take advantage [34] of that, I will give you from now until the first of December. Will that be long enough?

Mr. Mooslin: That will be satisfactory.

Trial Examiner Haycraft: The first of December to file with me your proposed findings and order, and thereafter I will close this case.

Mr. Brookfield: I will be back in Washington about the same time you are. I imagine that will be time enough for me.

Trial Examiner Haycraft: I think this is not a very difficult case, I wouldn't think.

Mr. Mooslin: A copy of the proposed finding will be served on Mr. Brookfield as well?

Mr. Brookfield: Well, you need not serve it, only send it to the Commission.

Trial Examiner Haycraft: You just include the necessary copies and they will send him a copy. The rules provide that ten copies should be filed. You might make that for—well, probably you bet-



ter make it ten. I am not going to try to change the rules of the Commission.

Mr. Mooslin: I will send ten.

Trial Examiner Haycraft: After you have done that I will close the case and render the initial decision. Then you still have the right to appeal from my decision to the Commission, and if you want to argue it you have the right to [35] appear before the Commission. You have that right.

Mr. Mooslin: We might also permit you to make your initial decision without filing any briefs or filing any objections to your initial decision and wait until the Commission issues its final order and then appeal directly from that order.

Trial Examiner Haycraft: Yes, you have the right to do that.

Mr. Mooslin: We have the right to do that. Thank you.

Trial Examiner Haycraft: If you want to make the stipulation now it would simplify things in the future.

Mr. Mooslin: I can't see any purpose in filing any further briefs on the matter or appealing from the initial decision or the right to object to the initial decision, but I reserve the right to appeal from the final order.

Trial Examiner Haycraft: Well, you have that right.

Mr. Mooslin: We have the right to do that without laying a foundation for the appeal by the filing of other documents?

Trial Examiner Haycraft: No, you have the

right to waive, if you desire, the appeal from the Trial Examiner's initial decision, you may waive that. [36]

Then you have the right under the law to appeal to the Court from the finality of that decision. Here is the way that will work: After the Trial Examiner's initial decision is served upon you, about 30 days later you will get another order from the Commission, not from me, in which the Commission calls attention to the fact that 30 days have expired so that that initial decision has become effective under operation of law, and then they give you 60 days within which to file your appeal to the Court. If you do not file within 60 days, then it becomes final and it stands.

Mr. Mooslin: It is not appealable at that time.

Trial Examiner Haycraft: If you desire at this time to waive the intervening procedure in the way of appeal——

Mr. Mooslin: No, I don't want to waive it at this time. I can waive it, I suppose, by failing to do so, and I will have to wait, but I do not desire to waive it at this time because I don't know whether I want to do it or not.

Trial Examiner Haycraft: I would appreciate if you filed your proposed findings if you give them in a simple way, limiting them to a general finding. If you wish you may waive that. If you waive the proposed findings, you have your further appeals after the Commission's order is entered. It will help us a little bit.

Mr. Mooslin: I shall probably file objections to

the findings of the Trial Examiner, because the findings of [37] the Board are generally identical with those of the Trial Examiner.

Trial Examiner Haycraft: Well, that depends. I think in a case of this kind it would be. I don't think there would be much chance——

Mr. Mooslin: Well, in other words, objecting to one would serve as an objection to all.

Trial Examiner Haycraft: Well, you have that opportunity, and you just do as you please about it. Then the hearing stands closed.

(Whereupon, at 10:55 a.m., November 6, 1950, the hearing in the above-entitled matter was closed.) [38]

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### CERTIFICATE

United States of America,  
Before Federal Trade Commission—ss.

I, D. C. Daniel, Secretary of the Federal Trade Commission and official custodian of its records, do hereby certify that transmitted herewith is a full, true, and complete transcript of proceedings had before the Federal Trade Commission in the above-entitled matter.

That this transcript is certified to the United States Court of Appeals for the Ninth Circuit, pursuant to the filing in said Court of a petition for review of a Decision of the Commission; Findings as to the Facts, Order to Cease and Desist and Order to File Report of Compliance dated July 9,

1951, issued by the Federal Trade Commission in the above-indicated proceeding.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said Federal Trade Commission, at its office in the City of Washington, D. C., this 1st day of November, A. D. 1951.

[Seal]      /s/ D. C. DANIEL,  
Secretary.

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[Endorsed]: No. 13104. United States Court of Appeals for the Ninth Circuit. David Bernstein, Trading as Affiliated Credit Exchange and Business Research, Petitioner, vs. Federal Trade Commission, Respondent. Transcript of the Record. Petition to Review and Set Aside Order of the Federal Trade Commission.

Filed November 6, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
For the Ninth Circuit

No. 13104

DAVID BERNSTEIN, Trading as Affiliated  
Credit Exchange and Business Research,  
Petitioner,

vs.

FEDERAL TRADE COMMISSION,  
Respondent.

PETITION TO REVIEW AND SET ASIDE  
ORDER OF THE FEDERAL TRADE COM-  
MISSION

To Honorable Judges of the United States Court  
of Appeals for the Ninth Circuit:

Your petitioner, David Bernstein, trading as  
Affiliated Credit Exchange and Business Research,  
respectfully shows:

I.

That your petitioner is now and at all times since  
the commencement of proceedings on the complaint  
of respondent as heretofore set forth, has been an  
individual trading under the names of David Bern-  
stein, doing business as Affiliated Credit Exchange,  
having his office and principal place of business in  
the City and County of Los Angeles, State of Cali-  
fornia, and carrying on a business of Collection  
Agency; that in addition thereto your petitioner has  
used in the past a certain postcard designed for his



own use as a Collection Agent in obtaining information from and concerning debtors; that your petitioner by means of an agent in Washington, D. C., mailed said postcards from Washington, D. C., to the various debtors, and that your petitioner uses the name Business Research on the return postcards with the return address in Washington, D. C.

## II.

On September 5, 1950, the respondent, Federal Trade Commission, issued its complaint against David Bernstein in a proceeding entitled "In the Matter of David Bernstein, trading as Affiliated Credit Exchange and Business Research" charging petitioner with having violated provisions of the Federal Trade Commission Act.

The complaint before the Federal Trade Commission, hereinafter referred to as the Commission, among other things, and, in substance, charged that petitioner does business under the name of Affiliated Credit Exchange and Business Research and is engaged in conducting a collection agency and in collecting accounts owed to others upon a commission basis contingent upon collection and that many of the accounts were sent to petitioner from persons residing in states other than California and that, further, in the course of petitioner's business in attempting to ascertain the current address of persons from whom he is endeavoring to collect money due to his clients, the names and addresses of employers of such persons and other information about such persons. The complaint further sets



forth the printed portions of said postcards and charges that by means of those postcards and through the form and phraseology of those postcards represents that he is engaged in conducting a business research bureau or office or in compiling business and labor statistics and that the information requested is for such purpose. That said representations and implications were false and misleading and that petitioner was not conducting and in no way was connected with any research bureau or labor statistical office and that petitioner's business and the sole purpose in sending such cards was in connection with the collection of accounts and that the uses of said cards has and has had the capacity and tendency to mislead and deceive, and has misled and deceived many persons to whom the said cards were sent and that the erroneous and mistaken belief that the trade names used by petitioner indicated the true nature of his business; that he was engaged in conducting a research bureau or office or in compiling business and labor statistics and induced the recipient thereof to give information to petitioner which otherwise they would not have supplied; that the aforesaid acts and practices of petitioner as therein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

### III.

Petitioner filed his answer herein (1) petitioner

admitted all the material allegations of fact charged in the complaint; (2) denied that he was engaged in interstate commerce; (3) and, further, alleged that the Federal Trade Commission lacked jurisdiction over this petitioner and that the Federal Trade Commission Act did not apply to this petitioner.

#### IV.

A hearing was held before a trial examiner appointed by the Federal Trade Commission on November 6, 1950, in Los Angeles, California, and that said trial examiner made his report on the evidence and on the 22nd day of December, 1950, the Commission issued its "Findings as to the Facts and Conclusion" and "Order to Cease and Desist." On January 16, 1951, petitioner caused to be filed his Notice of Intention to Appeal to the Federal Trade Commission and on February 5, 1951, petitioner caused to be filed herein his Appeal Brief together with a statement of the points upon which appellate intended to rely, copies of which were served upon the Commission.

That thereafter, on July 9, 1951, the Federal Trade Commission did issue its order sustaining in part respondent's appeal (petitioner herein) from initial decision of trial examiner.

#### V.

The petitioner herein seeks to set aside the Cease and Desist Order issued by the Federal Trade Commission on December 22, 1950, and that portion of the Order issued July 9, 1951, denying in part

respondent's appeal from initial decision of trial examiner.

That the Cease and Desist order of December 22, 1950, reads as follows:

“It Is Ordered that the respondent David Bernstein, an individual trading and doing business as Affiliated Credit Exchange and Business Research, his representatives, agents, employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a collection system, including the use of double postcards, form letters or other written or printed material, or similar devices in taking on the business of collecting or aiding in the collection of accounts or debts, in commerce as “commerce” is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Using the words Business Research or any other words of similar import to designate, describe or refer to respondent's business or otherwise representing, directly, or by implication that respondent is engaged in research in business or other forms of research.

2. Representing that respondent's said business is other than that of collecting accounts or debts or that the information sought by means of respondent's devices is for any purpose other than for the use in collection of accounts or debts.

3. Representing that respondent's business is located in Washington, D. C., or any other place

than where it is actually located for the purpose of misleading the debtors as to respondent's place of business."

That the Cease and Desist order issued July 9, 1951, modifies, in part, the order of December 22, 1950, in that said latter order acknowledges that petitioner does not sell or offer for sale said double postcards, and that said order as modified reads as follows:

"Is Is Ordered that the respondent, David Bernstein, an individual trading and doing business as Affiliated Credit Exchange and as Business Research, or trading under any other name or trade designation, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the use of post cards or other written or printed material in carrying on the business of collecting or aiding in the collection of debts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Business Research," or any other word or words of similar import, to designate, describe or refer to the respondent's business; or otherwise representing, directly or by implication, that the respondent is engaged in research in business or in other forms of research.

2. Representing, directly or by implication, that the respondent's said business is other than that of collecting accounts or debts, or that the information

sought by means of the respondent's devices is for any purpose other than for use in the collection of accounts or debts.

3. Representing, for the purpose of misleading debtors or others as to the respondent's place of business, that his business is located in Washington, D. C., or any other place than its actual location.

It Is Further Ordered that respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

## VI.

That the said "Findings as to the Facts" of said Commission are, in material and controlling respects, without support in the evidence received by the said Commission in said proceeding, but are contrary to such evidence; that said "Conclusion" is not supported by the findings or by the evidence received by the said Commission; that the Orders entitled "Order to Cease and Desist" are not supported by the record before the said Commission in said proceeding and are beyond the authority and jurisdiction of said Commission, and that in particular;

1. There is no evidence in the record to show that petitioner solicits for collection certain accounts from business and professional individuals, partnerships and corporations located in various states of the United States other than California;



2. That the activity of petitioner as shown by the records does not place him within the jurisdiction of the Federal Trade Commission as there is no showing that the petitioner is engaged in interstate commerce;

3. That under the proofs adduced before said Commission in said proceeding, said Commission was without authority or jurisdiction to enter any order respecting petitioner other than an order dismissing the complaint.

VII.

That the said Federal Trade Commission erred in taking or purporting to take jurisdiction over your petitioner by the issuance of its said "Order to Cease and Desist" is erroneous, contrary to law, and wholly void.

Wherefore, your petitioner prays this Court to review and set aside said order.

Respectfully submitted,

/s/ DAVID BERNSTEIN,

An Individual Trading Under the Names Affiliated  
Credit Exchange and Business Research.

Dated Los Angeles, California, the 17th day of  
September, 1951.

CARL J. MOOSLIN,

Attorney for Petitioner.



United States of America,  
Southern District of California,  
City and County of Los Angeles—ss.

David Bernstein, being first duly sworn, deposes and says:

That he is the petitioner named in the above-entitled matter and in the foregoing Petition to Review and Set Aside Order of Federal Trade Commission.

That he has read said Petition and knows the contents thereof and the same is true to the best of his knowledge, information and belief.

/s/ DAVID BERNSTEIN.

Subscribed and sworn to before me this 17th day of September, 1951.

[Seal]      /s/ CONSTANTINE M. MOOSLIN,  
Notary Public.

[Endorsed]: Filed September 19, 1951.

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[Title of Court of Appeals and Cause.]

STATEMENT OF THE POINTS UPON  
WHICH APPELLANT INTENDS TO RELY

To the Clerk of the Above-Entitled Court, and to  
the Federal Trade Commission:

Pursuant to Subdivision 6 of Rule 19 of the above-entitled Court, the above-named petitioner submits herewith his statement of the points upon

which he intends to rely in support of his Petition to Review and Set Aside Order of Federal Trade Commission against him:

I.

That the said "Findings as to the Facts" of said Commission are, in material and controlling respects, without support in the evidence received by the said Commission in said proceeding, but are contrary to such evidence; that said "Conclusion" is not supported by the findings or by the evidence received by the said Commission; that the Order entitled "Order to Cease and Desist" is not supported by the record before the said Commission in said proceeding and is beyond the authority and jurisdiction of said Commission; that in particular, no proof was introduced or adduced to show that petitioner was engaged in Inter-State Commerce.

II.

That in making, entering and publishing its said "Order to Cease and Desist" the said Federal Trade Commission erred in concluding that the acts and practices of the petitioner herein constituted use by petitioner in Inter-State Commerce within the intent and meaning and in violation of the provisions of Section 5 of the Federal Trade Commission Act.

III.

That no proof was adduced in said proceeding before the said Federal Trade Commission showing or tending to show that your petitioner has com-

mitted any act or acts, or engaged in any practice or practices prohibited by the provisions of Section 5 of said Federal Trade Commission Act, or that your petitioner has committed any other act or engaged in any other practice cognizable by the said Federal Trade Commission under the said Federal Trade Commission Act, or warranting the issue by said Commission of its said "Order to Cease and Desist"; that under the proofs adduced before said Federal Trade Commission in said proceeding the said Commission was without authority or jurisdiction to enter any order respecting your petitioner other than an order dismissing its said Complaint.

#### IV.

That the said Federal Trade Commission erred in taking or purporting to take jurisdiction over your petitioner by the issuance of its said "Order to Cease and Desist" is erroneous, contrary to law, and wholly void.

Dated: Los Angeles, California, this 16th day of November, 1951.

CARL J. MOOSLIN,  
Attorney for Petitioner.

To the Clerk of the Above-Entitled Court:

The petitioner named in the foregoing statement hereby desires the record in said proceeding as certified by you, printed in its entirety, and hereby designates for printing the entire transcript.

Dated November 16th, 1951.

/s/ CARL J. MOOSLIN,  
Attorney for Petitioner.

Return of service attached.

[Endorsed]: Filed November 19, 1951.

